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4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Part 75 and Chapter III

[CFDA Number: 84.250C and 84.250D]

American Indian Vocational Rehabilitation Services Program;
Proposed Waivers and Extensions of the Project Periods

AGENCY: Rehabilitation Services Administration, Office of
Special Education and Rehabilitative Services, Department
of Education.

ACTION: Proposed waivers and extensions of project
periods.

SUMMARY: These proposed waivers and extensions of project
periods would affect two sets of grantees under the
American Indian Vocational Rehabilitation Services (AIVRS)
Program in the Rehabilitation Services Administration
(RSA): eight grantees with 60-month projects initially
funded in fiscal year (FY) 2007 (72 FR 11851) and twenty-
four grantees with 60-month projects initially funded in FY
2008 (73 FR 6491). For FY 2013, the Secretary proposes to
waive the regulations that generally limit project periods
to 60 months and that restrict project period extensions
involving the obligation of additional Federal funds. The

Secretary proposes these actions in order to extend the 60-month projects for the grants initially funded in FY 2007 for a seventh year, and the grants initially funded in FY 2008 for a sixth year. The 32 AIVRS grants would be extended through September 30, 2014.

The proposed waivers and extensions would enable the 32 grantees to request funds and continue to receive Federal funding beyond September 30, 2013, when the project period ends. The grantees must meet all of the AIVRS program and other applicable requirements while receiving funds under this program. Further, if the proposed waivers and extensions are made final, RSA would not announce a new competition in FY 2013 or make new awards in FY 2013.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit all comments on this notice to August Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 5049, Potomac Center Plaza (PCP), Washington, DC 20202-2800.

If you prefer to send your comments by email, use the following address: august.martin@ed.gov. You must include the term "Proposed Waivers and Extensions for AIVRS" in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: August Martin.

Telephone: (202) 245-7410, or by email:

august.martin@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: The Secretary invites you to submit comments regarding the proposed waivers and extensions. We are particularly interested in comments on the effect these proposed waivers and extensions may have on the AIVRS program and on potential applicants for grant awards under any new AIVRS notice inviting applications, should there be one.

During and after the comment period, you may inspect all public comments about the proposed waivers and extensions in room 5049, PCP, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual

with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice of proposed waivers and extensions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under For Further Information Contact.

Background:

In a report released on May 9, 2012, the U.S. Government Accountability Office (GAO) raised a question about the Department's practice for determining eligibility under the AIVRS program. The report is titled "Federal Funding for Non-Federally Recognized Tribes," GAO-12-348, and can be found on the GAO Web site at www.gao.gov/products/GAO-12-348.

In this report, the GAO made a finding that the interpretation of "reservation" used by the Department in determining eligibility for grants under the AIVRS program raised substantial questions for the GAO about the eligibility of State-recognized tribes not located on State reservations but instead located on a defined and contiguous area of land where there is a concentration of tribal members and in which the tribe is providing structured activities and services, such as the tribal service areas identified in a tribe's grant application.

The GAO recommended that the Secretary review the Department's practices with respect to eligibility requirements for AIVRS grants and take appropriate action with respect to grants made to tribes that do not have Federal or State reservations.

In order to comply with the GAO recommendation, the Secretary will be asking for input from tribal officials, tribal governments, tribal organizations, and affected tribal members regarding a possible change in the Department's interpretation of "reservation" that would align it with the GAO interpretation. The Secretary's request for comments on this issue will be published in a separate Federal Register notice.

The Department believes it is advisable to maintain funding to existing AIVRS projects during the time period it is implementing the GAO recommendation. In this regard, in FY 2012, the Department extended through September 30, 2013, the eight projects initially funded in FY 2007. The Department published a notice inviting comments on the proposed waivers and extensions of the project periods for the FY 2007 grants on July 25, 2012 (77 FR 43560), which was adopted in final on September 26, 2012 (77 FR 59085).

The Department is still in the process of determining the appropriate response to the GAO recommendation and we

intend to ask tribal officials for their input consistent with Executive Order 13175. Therefore, we have decided not to hold a new AIVRS competition in FY 2013. The Department has determined that it is not advisable to announce a new competition under which entities would be expected to have the burden of proceeding through the application process while the Department reviews the eligibility requirements for this program.

Instead, the Department believes it is preferable to waive the requirements of 34 CFR 75.250 and 34 CFR 75.261(c)(2), which limit project periods to 60 months and restrict project period extensions that involve the obligation of additional Federal funds, for the eight projects initially funded in FY 2007 and the 24 projects initially funded in FY 2008. Section 121(b)(3) of the Rehabilitation Act of 1973, as amended (the Act) provides that RSA has the authority to make an AIVRS grant effective for more than 60 months, pursuant to prescribed regulations. Through this regulatory action, we are proposing to extend the project period for the grants initially funded in FY 2007 and FY 2008 through September 30, 2014.

The proposed waivers and extensions would enable the 32 AIVRS grantees to request funds and continue to receive

Federal funds beyond the 60-month limitation set by 34 CFR 75.250, while the Department determines the appropriate course of action in response to the GAO recommendation. The Department believes that the maintenance of the status quo during this process is in the public interest.

If these proposed waivers and extensions are made final for the 32 AIVRS grantees, RSA will base its decisions regarding annual continuation awards on the program narratives, budgets, budget narratives, and program performance reports submitted by these 32 AIVRS grantees, and on the requirements in 34 CFR 75.253. Any activities to be carried out during the year of continuation awards must be consistent with, or be a logical extension of, the scope, goals, and objectives of each grantee's application, as approved following the 2007 and 2008 AIVRS grant competitions. If we publish the proposed waivers and extensions as final, we would award continuation grants to each grantee that is making substantial progress in performing its AIVRS grant activities.

The proposed waivers of 34 CFR 75.250 and 34 CFR 75.261(c)(2) and extensions of the project periods, would not exempt the 32 AIVRS grantees from the appropriation account-closing provisions of 31 U.S.C. 1552(a), nor would they extend the availability of funds previously awarded to

the 32 AIVRS grantees past the five years provided for in 31 U.S.C. 1552(a). Under 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the U.S. Treasury Department and is unavailable for restoration for any purpose (31 U.S.C. 1552(b)).

Regulatory Flexibility Act Certification

The Department certifies that the proposed waivers and extensions would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed waivers and extensions are the eight grantees selected in FY 2007 currently receiving Federal funds, the 24 grantees selected in FY 2008 currently receiving Federal funds, and any other potential applicant for the estimated 32 awards for which there would have been a competition in FY 2013.

The Department certifies that the proposed waivers and extensions would not have a significant economic impact on these entities because the proposed waivers and extensions impose minimal compliance costs to extend projects already

in existence, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This notice of proposed waivers and extensions does not contain any information collection requirements.

Intergovernmental Review: The AIVRS program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under For Further Information Contact.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe

Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 6, 2013.

Michael K. Yudin
Delegated the authority
to perform the functions
and duties of the Assistant
Secretary for Special
Education and
Rehabilitative Services.

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